FILED

# **AFFIDAVIT IN SUPPORT OF ARREST WARRANT**

STATE OF NEVADA	)	JUL 6 2 47 PM 10
	)	SS: JUSTICE COURT LAS VEGAS HEVADA
COUNTY OF CLARK	)	BY

I, DAVID R. EVANS, being first duly sworn, deposes and states:

I am the Affiant herein and I am an investigator with the State of Nevada, Secretary of State, Securities Division (DIVISION). This Affidavit is made of my own personal knowledge, except where stated on information and belief, as to those matters, I believe them to be true and if called as a witness, I could competently testify thereto.

I have been employed by the DIVISION for fourteen years (14) years of which the last eight (8) years has been in law enforcement, and I am a Certified Fraud Examiner through the National Association of Certified Fraud Examiners. As an investigator, I have investigated numerous criminal offenses, including securities fraud, embezzlement, and forgery. I have attended various in-service training courses, including Analytical Investigation Methods, Financial Manipulation Analysis, and Financial Investigations Practical Skills.

The DIVISION is charged with enforcing Chapters 90 and 91 of Nevada Revised Statutes and Chapter 90 of the Nevada Administrative Code.

I was assigned to investigate **Timothy Shelburn** (hereafter SHELBURN) for possible violations of NRS chapter 90. During the investigation I learned facts, which lead me to believe that SHELBURN committed the following felony offenses, at and within the County of Clark, State of Nevada:

#### **Timothy Shelburn:**

- 1. SECURITIES FRAUD, a felony, in violation of NRS 90.570.2, (2 Counts)
- 2. THEFT, a felony, in violation of NRS 205.0832.1.b (2 Counts)
- 3. UTTERING A FORGED INSTRUMENT, a felony, in violation of NRS 205.110 (1 Count)

In support of the assertion to constitute the existence of probable cause for the requested warrant, the following facts are offered:

On or about December 22, 2008, after receiving the case on assignment, I began my investigation by conducting interviews with investor Richard Parks (PARKS) and other witnesses. PARKS provided copies of a stock certificate and a promissory note issued by Be Cool, Inc, which are securities under Nevada law.

I reviewed records of the Nevada Secretary of State, Corporations Division and determined that Be Cool, Inc was organized on February 20, 2008. Since March 1, 2010, Be Cool, Inc's status has been revoked for failure to file an annual list of officers and directors. At the time of organization, and at all times since organization, SHELBURN has been an officer of Be Cool, Inc. In or about October 2008, PARKS was added as an officer.

My investigation found that between May and June 2008, SHELBURN and Alfred Dix (DIX), an employee of SHELBURN, solicited investments from PARKS in a Be Cool, Inc project by telling him that Be Cool, Inc was developing a cooling device designed to maintain ambient cool temperatures in parked automobiles not in use. The air cooler device was purportedly a revolutionary product that would operate on rechargeable lithium batteries. This device, once completed, would purportedly be sold to The Black & Decker Corporation (hereafter Black & Decker) for a substantial profit to the shareholders.

PARKS was not provided a private placement memorandum prior to investing despite the fact that Be Cool, Inc's Private Placement Memorandum, with an effective date of January 23, 2008, was available.

Between May and June 2008, SHELBURN and DIX solicited investments in Be Cool, Inc, representing that PARKS could receive a return on his investments in the millions of dollars. SHELBURN and DIX told PARKS that his investment monies would be used to close out Be Cool, Inc's cooling unit project with Black & Decker.

PARKS was told by SHELBURN that provisional patents had been secured for the cooling device's two prototypes. PARKS was also told that Be Cool, Inc had a Letter of Intent

from Black & Decker to purchase Be Cool, Inc and its cooling device once the prototype had been completed.

On or about June 11, 2008, PARKS invested \$5,000.00 directly with SHELBURN at a restaurant in Las Vegas, NV. On or about June 18, 2008, PARKS invested an additional \$20,000.00 in the Be Cool, Inc project by cashing a check at a bank and handing the cash to DIX. DIX purportedly then gave these monies to SHELBURN for investment in the Be Cool, Inc project. In or about September 2008, PARKS received a stock certificate for his \$5,000.00 and \$20,000.00 investments in Be Cool, Inc from SHELBURN. The shares of stock issued to PARKS had a par value of \$0.50 per share.

During my investigation, I specifically asked PARKS what his understanding was when he gave his investment monies to SHELBURN and DIX. PARKS stated that SHELBURN had told him that his monies would go towards the development of Be Cool, Inc's cooling device.

In or about December 2008, DIX told PARKS that SHELBURN had lied to him and PARKS regarding the Black & Decker letter of intent, and that this letter had been proven to be a fake. PARKS then demanded that his investment monies be returned.

In or about January 2009, I interviewed DIX by telephone. DIX related the following regarding his involvement in Be Cool, Inc:

- That he first met SHELBURN in January 2008 at a party sponsored by the Nevada Development Authority in Las Vegas, Nevada.
- 2. That SHELBURN represented to him he was developing a portable automotive cooling device for the Black & Decker corporation.
- 3. That he agreed to help SHELBURN raise \$100,000.00 from investors to finish the device, which would then be sold to Black & Decker for a profit.
- 4. That he received 450,000 shares of Be Cool, Inc. stock from SHELBURN for finding investors.
- 5. That he lost trust in SHELBURN in September 2008 and demanded that SHELBURN show him proof of the relationship between Be Cool, Inc and Black & Decker.

- 6. That SHELBURN e-mailed him a copy of the Black & Decker letter of intent by sending it to Hans Franke, a mutual friend, as proof of the relationship between Be Cool, Inc and Black & Decker.
- 7. That in or about December 2008, he heard from Bill Graves, an attorney in California, that the Black & Decker letter of intent was fraudulent.

In or about January 2009, I interviewed Bill Graves by telephone. Graves related the following regarding his involvement with Franke and DIX:

- 1. That he has been Hans Franke's attorney for many years.
- 2. That in or about October 2008, he received an email from Franke with an attached Black & Decker letter of intent with a signature of Adan Ayala, patent attorney for Black & Decker's patent department.
- 3. That Graves then called Ayala to determine the status of the pending business deal between Black and Decker and Be Cool, Inc, and discovered that the letter was a fake.

In or about June 2009, I spoke with Hans Franke of Incline Village, NV who related the following:

- That in or about March 2008, he was "cold called" by DIX who wanted to know if he would be interested in investing in three start-up companies in Las Vegas, NV not involved with Be Cool, Inc.
- 2. That in or about April 2008, he traveled to Las Vegas, NV to meet with DIX to discuss the business opportunities but later declined to invest in them.
- 3. That while in Las Vegas, NV DIX told Franke about Be Cool, Inc's 120 million dollar deal with Black & Decker and the pending deal to sell the cooling device to the Pep Boys Corporation. Franke didn't believe DIX'S representations about the pending deals with Black & Decker and Pep Boys. Franke agreed to look at Be Cool, Inc's deal with Black & Decker if he could see the purported letter of intent.
- 4. That on or about October 2, 2008, Franke received an email from SHELBURN

that stated "Hans, Attached, letter from B&D". This email contained a letter of intent purportedly from Adan Ayala of Black & Decker concerning the pending purchase of Be Cool, Inc. Franke then forwarded the letter to his attorney Bill Graves in California, who after contacting Adan Ayala, confirmed the letter was a fake.

On April 3, 2009, I contacted Adan Ayala, patent attorney for Black & Decker regarding the Black & Decker Letter of Intent that SHELBURN had touted as proof of the business relationship between Be Cool, Inc and Black & Decker. During this interview, Ayala related the following:

- Ayala confirmed that he knew SHELBURN, but only from business dealings regarding another company, LifeBatt, Inc, a Nevada Corporation.
- 2. That in early 2008, Ayala was contacted by SHELBURN who told him that he was calling on behalf of LifeBatt, Inc, a Nevada company that was developing long cycle batteries, and over the next several months, SHELBURN helped coordinate the testing of LifeBatt, Inc's batteries with Black & Decker.
- 3. Ayala sent a progress letter to Don Harmon, President of LifeBatt, and CC'd SHELBURN, regarding the testing of LifeBatt, Inc's batteries by Black & Decker. Ayala sent this letter based on repeated requests from SHELBURN for a progress letter.
- 4. That at no time during any of the discussions with SHELBURN or Don Harmon of LifeBatt, Inc, did they ever discuss Be Cool, Inc, its interior automobile cooling device, or a progress letter for Be Cool, Inc.
- 5. That in or about December 2008, he received an email from Bill Graves, an attorney in California, requesting that he authenticate a letter purportedly signed by him (Ayala) and addressed to Tim Shelburn of Be Cool, Inc. The letter is similar to the letter sent to Don Harmon, except that it is addressed to SHELBURN and states, among other things, "upon completion we will move forward with the purchase of Be Cool, Inc. and its cooling products." Ayala

stated that he never wrote this letter and provided me with an Affidavit of Forgery in April 2009.

In or about April 2009, I contacted Michelle Robinson, registered agent for LifeBatt, Inc in Las Vegas, Nevada. During this interview, Robinson related the following:

- That SHELBURN had represented to her that he had a pre-existing relationship with a Black & Decker attorney, and could help Robinson and LifeBatt, Inc with promoting their long cycle batteries.
- That in September 2008, she signed an independent advisor/finder's fee
  agreement with SHELBURN. This agreement allowed SHELBURN to market
  LifeBatt, Inc's battery products and technologies on behalf of the company.
- 3. That she never compensated SHELBURN under this contract because no deal was ever formed between LifeBatt, Inc and Black & Decker.
- 4. When Robinson was shown SHELBURN's letter of intent, she suggested the letter was a fake, because SHELBURN was only an outside representative of LifeBatt, Inc, and the letter listed an address for LifeBatt, Inc on Desert Inn Road in Las Vegas, NV, an address that LifeBatt, Inc has never used.

In or about January 2009, SHELBURN contacted me by telephone regarding his company Be Cool, Inc. During this conversation, SHELBURN related the following:

- 1. That he didn't think he had done anything wrong in soliciting investors in the Be Cool, Inc project, and that he only solicited friends and family for the investment.
- 2. That all of the investors he solicited were "accredited" investors, but wasn't sure about the investors DIX had brought into the investment.
- 3. When asked about the Black & Decker letter of intent, he replied that he had asked Adan Ayala of Black & Decker for a progress letter, and that Ayala had told him to send him a sample progress letter that he wanted, which he sent, but Ayala didn't approve. SHELBURN told me that he mistakenly sent the sample letter that he had asked Ayala to sign to Hans Franke. SHELBURN did not explain why this letter was on Black & Decker letter head, had Ayala's signature

on it, or even why it had Be Cool, Inc in it, when all conversations between Ayala and SHELBURN about a progress letter had to do with LifeBatt, Inc and it's long cycle batteries.

4. That he had only received \$20,000 of PARKS' investment monies, indicating that DIX may have kept some of PARKS' investment monies.

In or about September 2009, I contacted Tawana Hawkins, Paralegal Specialist, at the US Department and Trademark Office regarding SHELBURN'S claims of having provisional patents on his cooling device. Hawkins told me that the US Patent and Trademark Office found no provisional patents for Be Cool, Inc's interior auto cooling device, as claimed by SHELBURN, but did find a patent application for a Be Cool, Inc solar misting chair. Hawkins provided me a certificate of record attesting to the results of her search.

# COUNTS 1-2 SECURITIES FRAUD (SHELBURN)

## Victim: Richard Parks

In or about June 2008, PARKS first met SHELBURN and DIX at a luncheon in Las Vegas, NV. At this luncheon, SHELBURN told PARKS that he was developing a portable air cooler device for Black & Decker, and had a signed letter of intent from Black & Decker to purchase Be Cool, Inc, and its device, once it was developed. SHELBURN told PARKS that he needed another \$25,000.00 to close the deal with Black & Decker within the next 10 days. When PARKS asked to see the Black & Decker letter of intent, SHELBURN told him that he had forgotten the letter at home. PARKS decided to invest anyway and handed SHELBURN \$5,000.00 in cash.

On or about June 18, 2008, PARKS invested an additional \$20,000.00 by cashing a check made out to DIX, and then handing the cash to him. For this investment, PARKS received a Promissory Note counter-signed by DIX. The terms specified in the note were that DIX would pay PARKS \$525,000.00 payable by July 18, 2008. Other conditions specified in the note stated "Supply Lender (Rocky Parks) with 50,000 share's of Be Cool, Inc Stock."

PARKS was told by DIX that the \$20,000.00 he collected from him would be given to

SHELBURN to invest in the Be Cool, Inc project.

In or about September 2008, PARKS received a stock certificate from SHELBURN for 50,000 shares of common stock in Be Cool, Inc.

PARKS stated that he ultimately relied on the representations that Be Cool, Inc had a pending deal with Black & Decker, pursuant to a letter of intent to purchase Be Cool, Inc once the cooling device had been completed. The representations made to him regarding the pending deal with Black & Decker influenced him to invest immediately or risk losing out.

PARKS stated that SHELBURN had told him that his past business experience involved assisting companies with going public, and that he and his wife had helped other companies move forward with their products. However, it was found that in connection with the solicitation for the sale of the stock certificate to PARKS that SHELBURN omitted to disclose that he had been granted a Chapter 7 bankruptcy in August 2006. PARKS told me that he would not have invested had he known this prior to investing.

PARKS' loss is \$25,000.00.

## COUNTS 3-4 THEFT (SHELBURN)

#### **Victim: Richard Parks**

Records provided by PARKS reveal that he invested \$5,000.00 on June 11, 2008 and \$20,000.00 on June 18, 2008. PARKS was told by SHELBURN that his \$5,000.00 and \$20,000.00 investment monies were to be used to close the deal with Black & Decker within the following 10 days. PARKS requested from SHELBURN, but never received, financial statements for Be Cool, Inc or the Black & Decker Letter of Intent.

SHELBURN exercised control over PARKS' investment funds with the intent to permanently deprive him thereof.

### COUNT 5 UTTERING A FORGED INSTRUMENT (SHELBURN)

#### Victim: Adan Ayala

Ayala stated that the letter of intent that SHELBURN sent to Franke with his (AYALA)

1	signature on it is a forgery, and has	s provided an Affidavit of Forgery to that effect.
2		
3	Your Affiant respectfully submits the	nat the activity described above establishes probable cause
4	that Timothy Shelburn, has comm	nitted the following felonies: SECURITIES FRAUD, a felony,
5	in violation of NRS 90.570.2 (2 Cou	unts); THEFT, a felony, in violation of NRS 205.0832.1.b (2
6	Counts; UTTERING A FORGED IN	NSTRUMENT, a felony, in violation of NRS 205.110; (1
7	Count), Therefore, your Affiant res	spectfully requests the issuance of an arrest warrant against
8	Timothy Shelburn on said charges	es. FURTHER YOUR AFFIANT SAYETH NAUGHT.
9		
10	a .e	
11	1	
12		Java Karans
13		DAVID R. EVANS Criminal Investigator III
14		Secretary of State, Securities Division
15		
16	SUBSCRIBED and SWORN to before	fore me
17	by David R. Evans	
18	this 28th day of June.	_, 2010
19		,
20	Man Moln	
21	NOTARY PUBLIC, in and for said	
22	County and State	
23		
24		NAOMI MELNER NOTARY PUBLIC
25		No.06-101984-2 My Appt Exp. Dec. 1, 2013
26		To the state of th
27		
[		
28		
28		